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# O F P M C

Ontario Farm Products Marketing Commission

## GUIDELINES FOR MARKETING BOARD EXPENDITURES AND REPORTING REQUIREMENTS AND REGULATIONS ON INVESTMENTS BY MARKETING BOARDS

*Fact Sheet January 12, 2000*

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### INTRODUCTION

The Ontario Farm Products Marketing Commission has prepared these guidelines to assist marketing boards in operating within their delegated authorities when they spend producer funds. Boards established under the Farm Products Marketing Act and the Milk Act have been given the authority to collect mandatory fees from producers of regulated products, but are restricted to using these funds for purposes defined by regulation.

These guidelines are for use by:

- marketing board directors when they make decisions on how to spend producer funds
- producers when they consider their expectations of their boards
- the Commission and its staff when they review the operations of boards.

The Commission has given marketing boards considerable discretion as to how they spend producer funds. These guidelines are not intended to restrict or fetter these delegated authorities.

### PRINCIPLE

Producers are required by law to pay mandatory fees to support compulsory marketing systems. Marketing boards must spend funds collected from producers in a manner that is appropriate for their industry and within their delegated authority.

In making decisions on expenditures of funds, board directors must be mindful of their accountability not only to the Commission, but also to their producers.

## REGULATORY CONTEXT

The rights of marketing boards to collect and spend money are derived from regulations. Boards are created under marketing plans which are approved by Cabinet. The Commission gives boards various powers and authorities which form the basis for an industry's marketing system.

Although each marketing regulation is unique, the Commission has given boards the ability to obtain funds through a combination of license fees, producer levies, service charges or penalties.

The Commission also authorizes each board to "use any class of license fees, service charges and other money payable to it, for the purposes of paying the expenses of the local board, carrying out and enforcing this Act and the regulations and carrying out the purposes of the plan under which the board is established." (*from Section 7(1) 20, Farm Products Marketing Act (FPMA), see also Sections 7(1) 21 and 7(1) 22, Milk Act*). The purpose of each marketing plan is to provide for the control and regulation of the producing and marketing of one or more farm products.

Some boards have also been given the authority to establish funds (*Section 7(1) 22, FPMA and Section 7(1) 23, Milk Act*). As well, the Commission has given each board the power to "stimulate, increase and improve the marketing of farm products by such means as it considers proper" (*Section 3(1)(h), FPMA; see also Section 3(2)(g), Milk Act*).

Marketing boards have a clear authority to pay expenses related to the administration of their regulated marketing systems, the enforcement of their

regulations and the promotion of their regulated product(s). Some boards also have the authority to purchase and sell regulated products. Other expenditures are often less clear, and so a set of general and specific guidelines have been developed to assist in these decisions.

## GUIDELINES FOR EXPENDITURES OF BOARD FUNDS

### General Guidelines

It is difficult to cover all situations or questions in a set of guidelines relating to the expenditures of board funds. In general, board directors should keep in mind that these funds are generated through mandatory contributions by producers. Directors need to ensure all expenditures will stimulate, increase or improve the marketing of the regulated product(s) and should be prepared to defend the expenditures on these grounds. The following outline some recommendations for more specific situations.

### Guidelines for Involvement in Related Industries

- Marketing boards may not use producer funds to invest in related businesses. If producers (separate from the board) wish to enter the processing business or purchase an input supplier, they have the option of forming a co-operative or company to do so.
- There may be extenuating circumstances where a marketing board has been delegated the authority to spend producer funds to process the regulated product in order to remove surplus product from the market.
- Marketing boards should avoid going into competition with existing businesses, particularly if these businesses are in some way regulated by the board.

## **Guidelines for Research Expenditures**

- Expenditures on basic or applied agricultural, product development or market research related to the regulated product(s) and processed versions of the regulated product(s) may be justified on the basis the results may "stimulate, increase and improve" the marketing of the regulated product. This includes research into management and production practices for the regulated product.
  - Boards may receive royalties resulting from research they have funded.
  - When sharing the results of non-proprietary research, marketing boards should not give a competitive advantage to one customer if it will disadvantage another. If a board has a policy of funding proprietary research, it should ensure that all its customers have an opportunity to present proposals to access board funds for proprietary research.
- so, is an appropriate use of producer funds.
- Boards should not donate money to other organizations unless they can clearly demonstrate how the recipient will facilitate or improve the producing or marketing of the regulated product(s). In cases where there is a strong will among members to provide assistance to a particular cause or organization, boards may wish to assist in coordinating individual producers' voluntary contributions.
  - Notwithstanding the above, donations designed to enhance corporate image can be made if there is reasonable expectation of some future stimulus, improvement or increase in the producing and marketing of the regulated product(s) as a result.
  - Donating food and/or promotional material is a justifiable public relations expense but boards are encouraged to ensure these donations do not distort markets.

## **Guidelines for Lobbying/Funding Other Organizations**

- Hiring/paying lobbyists or staff to promote a specific goal that is intended to "stimulate, increase and improve" the marketing of the regulated product is an appropriate use of producer funds.
- Direct funding of political parties or governments by boards is not appropriate.
- Purchasing memberships in organizations which promote goals which could "stimulate, increase and improve" the producing or marketing of the regulated product or which provide the marketing board services or information which help it to do

## **Guidelines for Quota Expenditures**

- In general, marketing boards of supply managed industries should not purchase, sell or lease quota to or from Ontario producers, with the following exceptions:
  - Buying and selling small volumes of quota to balance a quota exchange.
  - Acting as an agent for producers if quota becomes available from another province. However, any board transaction should be revenue neutral.
- Marketing boards should not act in such a way as to distort the functioning of the quota market. Actions must be transparent and fair to all producers.

## **RELATED REGULATIONS**

### **Reporting Requirements**

- Marketing boards must report each grant made to an individual or organization in their financial statement. However, if a board passes a by-law establishing a threshold amount below which grants can be reported in the aggregate, and the by-law is passed by the majority of producers or delegates at an annual meeting, only the number of grants and the total amount of these grants needs to be reported.
- Information about grants reported in the aggregate must be provided to producers and the Commission upon request.
- Financial reports and statements of operations must be distributed to each producer or published in a newspaper or magazine having a general circulation among its producers.

Reference can be made to O.Reg. 617/99 under the FPMA, and O.Reg. 615/99 under the Milk Act for the legal requirements with respect to the reporting of grants.

### **Restrictions on Board Investments**

Many marketing boards maintain a reserve of surplus or contingency funds. There are very specific requirements as to what types of investments boards may make with these funds. This is to ensure that producer funds are held in relatively secure financial vehicles.

Boards established under the Farm Products Marketing Act or the Milk Act may invest in financial vehicles such as the following:

- investment certificates of banks including foreign banks authorized under the *Bank Act* to operate in Canada
- paid up shares of credit unions or the Ontario Co-operative Credit Society
- investment certificates of trust companies
- debentures of loan corporations
- bonds, debentures etc. guaranteed by the federal or provincial government, a municipal corporation, or the government of the U.K.

For a complete listing of financial instruments in which boards can invest their surplus funds, please refer to Figure 1.

In addition, boards under the FPMA may lend money to funds established under the Farm Products Payment Act (*Section 16(2), Regulation 400, FPMA*).

FIGURE 1 - SECTION 16 OF REGULATION 400 UNDER THE FPMA, AND SECTION 13 OF O. REG. 209/99 UNDER THE MILK ACT AS AMENDED BY O. REG. 618/99 AND O. REG. 616/99.

## INVESTMENTS

No board shall invest any surplus funds of the board other than in,

- (a) bonds, debentures or other evidences of indebtedness,
    - (i) of or guaranteed by the Government of Canada,
    - (ii) of or guaranteed by the government of any province of Canada,
    - (iii) of or guaranteed by the Government of the United Kingdom,
    - (iv) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Ontario., or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectible by or through the municipality in which such property is situated;
  - (a.1) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if those payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity;
  - (a.2) debentures of any loan corporation that is registered under the *Loan and Trust Corporations Act*;
  - (a.3) guaranteed investment certificates of any trust corporation that is registered under the *Loan and Trust Corporations Act*;
  - (a.4) deposit receipts, deposit notes, certificates of deposits, acceptances and other similar instruments issued or endorsed by any bank listed in Schedule I or II to the *Bank Act* (Canada) or by any authorized foreign bank within the meaning of Section 2 of the *Bank Act* (Canada);
  - (a.5) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*, 1994;
  - (b) investment certificates of a bank listed in Schedule I or II to the *Bank Act* (Canada) or of an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada)".
  - (c) Paid up shares of, (i) any credit union league to which the *Credit Unions and Caisses Populaires Act* applies, and
    - (ii) The Ontario Co-operative Credit Society.
- (1.1) A board shall not invest its surplus funds in the investments listed unless the investment is in other respects reasonable and proper.